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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/865,180	05/24/2001	Maurice Eduardus Theodorus van Esbroeck	V0028/258606	4606

23370 7590 05/27/2005

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EXAMINER

WEINSTEIN, STEVEN L

ART UNIT	PAPER NUMBER
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1761

DATE MAILED: 05/27/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

09/865,180

**Applicant(s)**

THEODORUS VAN ESBROECK ET AL.

**Examiner**

Steven L. Weinstein

**Art Unit**

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 7/22/04 & 12/21/04.  
2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.  
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 2,4,6-11,17,21,24-26,32-34,48 and 50-68 is/are pending in the application.  
4a) Of the above claim(s) 32 and 50 is/are withdrawn from consideration.  
5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.  
6) ☒ Claim(s) 2,4,6-11,17,21,24-26,33,34,48 and 51-68 is/are rejected.  
7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.  
8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.  
10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)  
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.  
4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_.  
5) ☐ Notice of Informal Patent Application (PTO-152)  
6) ☐ Other: \_\_\_\_\_.

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The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 2, 4, 6-11, 17, 21, 24-26, 33, 34, 48, 51-60 and 61-68 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dew (4,196,221) in view of Prasad et al (6,309,681), Alsop ('204), Simonsen ('444), Muschany ('007), Evans et al ('726), Tanaka ('561), Janssen et al ('671), Osiadacz ('088) and Vincent et al (GB 2177585).

In regard to claims 2, Dew discloses flavoring meat products comprising conveying meat products with a conveyor means along a conveyor path past a flavoring application station wherein the flavoring application station comprises at least one sprayer for emitting a pressurized stream of at least one flavoring and emitting the pressurized stream of flavoring from the sprayer and directing the stream onto the meat product. See in the regard column 5, lines 1 plus wherein Dew discloses the stream can include flavor, liquefied smoke, etc and col. 5, para. 8 wherein Dew discloses the stream is pressurized and as evidenced by the figure, the stream is sprayed horizontally. Claim 1 recites the stream is a "marinade" and the stream is a "jet". Since a marinade is a flavor, it would appear that Dew's flavor could be read as a marinade. Similarly, since Dew emits the stream under pressure and the term "jet" does not appear to be further defined, then it would appear that Dew's pressurized stream is a jet. Thus, although it would appear that an argument could be made for anticipation of claim 1 in view of Dew, the rejection will err on the side of caution and employ 35 USC

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103 obviousness. That is, since Dew teaches a pressurized flavor stream, to employ a marinade jetted stream would have been an obvious result effective variable in view of Dew. Prased et al is relied on as further evidence that it was conventional to apply marinades by spraying. Alsop can be relied on, as previously, as further evidence of the conventionality of continuously applying a flavoring to a conveyed meat product. Simonsen can be relied on, as previously, as further evidence of employing high pressure jet nozzles to apply an additive to meat products as well as a messaging post treatment including sound waves and orienting the meat relative to the treatment means. Muschany is relied on, as previously, as further evidence of flavoring and to teach detecting the dimensions of the product by photosensors for proper treatment. Evans is relied on as, previously, to further teach coating foods with flavors/seasonings and to teach adhesive application. Tannka et al., Janssen et al and Osiadacz are relied on, as previously, as further evidence of the obviousness of conveying and treating food products. Finally, Vincent et al is relied on as further evidence of the conventionality of coating, including coating foods using pressurized sprays. Note, too, that Vincent et al teaches shielding or masking portions of food that are not to be coated.

In summary, applicants have combined a series of conventional expedients, well known in either the food coating art specifically or the coating art generally, and derived no new or unexpected result therefrom.

All of applicants remarks have been fully and carefully considered but are seen to be moot in view of the new ground of rejection necessitated by applicants amendment.

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The remainder of the references newly cited on the USPTO 890 form are cited as art of interest.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a).

Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steven L Weinstein whose telephone number is (571) 272-1410. The examiner can normally be reached on Monday-Friday 6:30am to 3:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on (571) 272-1398. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

S. Weinstein/af  
May 20, 2005

*Steven Weinstein*  
**STEVE WEINSTEIN** 1761  
**PRIMARY EXAMINER**